1- IN THE HIGH COURT OF UTTARANCHAL.
AT NAINITAL.
F.A. No. 8 of 2001

Bhagwat Sahai Sharma S/o Bhika Sahai Sharma

R/o Anusandhan Evam Niyojan Khadya Cokibt Gyanshu,

Uttaranchal, Tawnl Bhalwari

District Uttarkashi .....Defendant/Appellant.

Versus

Bhawani Datt Nautiyal R/o Bhatwari Marg,

Uttarkashi ..... Plaintiff/respondent.

Sri Kishore Kumar, holding brief for Sri Ramji Srivastava,
Advocate for the appellant.
Sri H.M. Raturi, learned counsel for the respondent.

(**Hon'ble B.C. Kandpal, J.)**

This appeal U/S 96 C.P.C. has been preferred by the defendant against the judgment and decree dated 19-12-2000, passed by the District Judge, Uttarkashi, in O.S. No. 39 of 1996, Bhawani Dutt Nautiyal Vs. Bhagwat Sahai Sharma, decreeing the suit for the recovery of Rs. 27,180/- along with interest @ 12% per annum from 27-8-1995.

2- Brief facts of the case are that the plaintiff Bhawani Dutt Nautiyal filed a suit against the respondent Bhagwat Sahai Sharma, for the recovery of Rs. 27,180/- along with interest thereon.

Accordingly to the plaintiff, he as well as the defendant are contractors and do the works on contracts in government and semi-government departments. Defendant was sanctioned contract in Maneri Valley Project under contract No. 3-A.A./95-96 for Rs. 85,664=47P. This work was to start by 24.7.95 and it was to be completed upto 23.8.95. The defendant asked the plaintiff for help on the assurance that after completion of work he will return the money to the plaintiff. Plaintiff completed the work by expending his money and after settlement of accounts Rs. 27,180/- came towards the defendant. The defendant, at that time had no money, hence he executed an agreement on 26-8-95 owning his liability to pay the money on receiving the payment from the department. The written agreement was executed in presence of

Kamal Singh Rana and Shakti Prasad Uniyal, who also made their signatures on it. On being asked, the defendant did not pay the money to the plaintiff, hence he filed suit for the recovery of the said amount.

3- The defendant contested the suit by filing his written statement before the trial court. He admitted that he is contractor and he was given contract by Manery Valley Project amounting to Rs. 85,664=47P. But this fact was not admitted that he ever got help of the plaintiff in completing the work. He also denied the execution of the written agreement. He also alleged that the stamp used in the so called written deed was not purchased by him. He also alleged that the suit has been filed on wrong facts, hence, is liable to the dismissed.

4- On the pleadings of parties, the trial court framed the following issues in the suit:-

1- Whether the defendant asked for help from the plaintiff in order to complete the contract work given to him by Maneri Valley Project on 21.7.95 for Rs. 85,664=47P?
2- Whether the plaintiff expended Rs. 27,180/- towards the contract work sanction is favour of the defendant?.
3- Whether the defendant executed the written deed paper No. 11-C in favour of the plaintiff after settling the accounts?. If so, whether the defendant had accepted the liability to pay Rs. 27,180/- to the plaintiff?.
4- Whether on 28-7-95 in presence of Kamal Singh Rana and Shakti Prasad Uniyal the defendant accepting liability to pay Rs. 27,180/- towards the plaintiff, executed written deed on five rupee stamp?. If so, its effect?.
5- Whether the plaintiff is entitled to get Rs. 27,180/- along with interest from the defendant?.

5- Therefore, parties adduced evidence in support of their cases. The District Judge, on appreciation of evidence on record and having

hearing learned counsel for the parties, decreed the suit for the recovery of Rs. 27,180/- along with interest @ 12% per annum from 27.8.1995.

6- Feeling aggrieved, the defendant has filed the appeal before this court.

7- Heard learned counsel for the parties and perused the record.

8- Learned counsel for the appellant has submitted that the defendant did not take any help from the plaintiff for the completion of the contract work and no agreement was executed by the defendant in favour of the plaintiff. Learned counsel also challenged the validity of the written deed dated 26-8-95, relied on by the trial court, on the ground that the stamp was not purchased on the name of the defendant and the disputed signatures of the defendant on it, have not been got compared by the handwriting expert with the signatures of the defendants.

9- I find no substance in the arguments advanced by the learned counsel for the appeal.

10- Perusal of the record reveals that the defendant has not denied the contract work undertaken by him. The period of completion of the work was 24.7.95 to 23.8.95. The case of the plaintiff is that on the asking of defendant, he completed the work and thereafter settling the accounts, a sum of Rs. 27,180/- of the plaintiff came towards defendant. By that time the defendant was not made payment of the work by the department, hence he owing his liability to pay the said amount, executed the written deed on 26-8-95. The defendant's case is that on the date of execution of the written deed the contract work was not completed, hence there was no occasion to execute such an agreement. From perusal of the record it appears that there were some defects in the work carried by the defendant and the department was pressing hard on the defendant to complete the defective work, as will appear from the letter paper No. 52-C dated 11-6-96 sent by the Assistant Engineer to the defendant. The defendant was also made

running payment of the work. The plaintiff also filed paper No. 81-B showing details of expenditure made by him towards labour charges. for mules etc. From the facts and circumstances of the case. It cannot be said that there was no occasion for the defendant to execute the written deed in favour of the plaintiff.

11- Perusal of written deed, Ext.1, shows that the stamp was purchased in the name of the defendant, as is clear from the endorsement made on the back side of the stamp paper. This written deed was scribed by Shakti Prasad Uniyal. This witness has been examined as P.W. 2 He has deposed that he was petition writher at Collectorate Uttarkashi at the relevant time. Defendant Bhagwat Sahai had himself purchased the stamp. The aforesaid facts belie the stand taken by the defendant and falsify his defence. This witness has specifically deposed that the deed was got written by Bhagwat Sahai. In the cross-examination this witness has alleged that the overwritings in the deed were written by him at the time of the execution of the same. Nothing material has been brought out in the cross-examination of this witness which may discredit his testimony. This witness is an independent witness. P.W.1, Bhawani Dutt, plaintiff has also proved his claim on oath.

12- Further the defendant simply denied the execution of the deed. He did make any efforts to get his signatures compared with the disputed signatures by the handwriting expert and did not discharge his burden.

13- I have perused the finding recorded by the trial court and I find no illegality or irregularity in it. The trial court was justified in coming to the conclusion that the plaintiff on the asking of the defendant, helped him in doing the contract work and expended Rs. 27,180/- and the defendant owing his liability to pay the said amount executed written deed, Ext. 1 in favour of the plaintiff and he is liable to repay the same to the plaintiff.

14- Learned counsel for the appellant also submitted that no rate of interest was pleaded in the suit by the plaintiff and as such the rate of interest should not have been fixed at 12% on the decreetal amount. The plaint shown that the plaintiff has claimed the relief for recovery of Rs. 27, 180/- along with interest. Admittedly no rate of interest has been mentioned by the plaintiff, therefore, the interest should be awarded at such rate, which the court deems reasonable to be paid on the principal sum adjudged. I find that the trial court has awarded a reasonable rate of interest and the same needs no interererence by this court.

15- For the reasons recorded above, the appeal lacks merit and is liable to be dismissed.

16- Accordingly the appeal is dismissed. The impugned judgment and decree dated 19-12-2000 is hereby confirmed.

17- The interim stay order, if any, stands vacated.

(B.C. Kandpal, J.)

Dated: 07.12.2006